CF0000057723

9 (Jail) C. J. P. R./I-91 CrA 1028 /94

APPEAL OF PRISONER (2)

No. 956 Name शोहर साय

Father's name सुधनराम नगेसिया, साकिन ग्राम - पथनपारा थोड़ी, थाना - रामपुर

Residence जिला - सरगुजा (म.प्र.) Age 40 वर्ष

Sentended to 3 (तीन) वर्ष कारावास एवं Rs. 1000/- अर्थदण्ड या 6 माह on 2/8/1994

Under Section 302 भा.दं.वि. by न्यायालय - प्रथम अपर सत्र न्यायाधीश - अम्बिकापुर (म.प्र.)

S.T. No. 135/93

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date on which copy received 9/8/1994

3 Date on which Appeal sent 24/8/1994

4 Whether the prisoner wishes to be represented or not. —

No. 956 Name शोहर साय s/o सुधनराम

Confined in केन्द्रीय जेल Jail रायपुर (म.प्र.)

No. 6827/विधि/94 Dated 24/8/1994 199

Forwarded to the अतिरिक्त पंजीयक महोदय, उच्च न्यायालय, मध्यप्रदेश जबलपुर (म.प्र.)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

संलग्न :- S.T. No. 135/93 की निर्णय प्रतिलिपि - मूलतः 1

Superintendent,
Central Jail, Raipur. (M.P.)
Jail

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. Dated 199

Forwarded to the

High Court of Madhya Pradesh
JABALPUR
31 AUG 1994
Reg. No. 726
Receipt Clerk
31.8.94 High Court, Jabalpur

Date of receipt in Appellate court

[P. T. O.]

(17)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... G.A. 1028/94 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

19-1-2006

Mr. Satyendra Sahu, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

By this appeal under Section 374 (2) of the Cr.P.C., appellant Sohar Sai Ram has questioned the legality of the judgment of conviction and order of sentence dated 2-8-1994 passed by the 1st Additional Sessions Judge, Ambikapur, in Sessions Trial No.135/93, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing the murder of his father namely, Sughan Ram, convicted him under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months.

Facts necessary for the disposal of this appeal are that on 23-11-1992 at about 4.30 p.m. accused Sohar Sai and his father Sughan Ram were at the residence, they were talking, all of a sudden, the accused went inside the house, brought a crowbar and attacked his father with the crowbar on his head twice, as a result of which Sughan Ram received injury on head and fell down. Blood started oozing out of the injuries. Sarpanch Maansai (PW-2) was called and the matter was reported by Pradhan Ram (PW-5) in Police Station: Rajpur.

(18)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... CrA 1028/94 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The Station House Officer after registering the first information report Ex.P-11 left for the scene of occurrence, prepared Panchnama of the body Ex.P-1 and sent the body for post-mortem examination to the Community Health Centre, Rajpur, where Dr. P.L. Verma (PW-4) conducted post-mortem and prepared the post-mortem report Ex.P-4. The injuries were also examined by Dr. P.L. Verma and he prepared the injury report Ex.P-10. The accused while in police custody gave memorandum Ex.P-12 regarding the place where he kept the crowbar and in pursuance of that, the crowbar was recovered under Ex.P-13.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned 1st Additional Sessions Judge, Ambikapur, received the case on transfer for trial.

The prosecution examined ten witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he has been falsely implicated in the crime, he was mentally upset at the time of crime in question and he was taking treatment for that. One witness namely, Thola Ram was examined in defence.

After hearing the arguments of Additional Public Prosecutor and counsel for the accused, learned Additional Sessions Judge convicted and sentenced the accused as mentioned in para No.1 of this judgment.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... G.A. 1028/94 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Mr. Satyendra Sahu, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.

The homicidal death of Sughan Ram is not in dispute. The crime in question was witnessed by Cherki Bai (PW-8), wife of the accused, who has clearly stated in her evidence that her father-in-law and the accused (her husband) were sitting outside the house, they were talking regarding transportation of paddy, all of a sudden, the accused came inside the house, took the crowbar and assaulted with the crowbar on the head of her father-in-law on which she raised cries and blood started oozing out of the injuries.

Krishna Prasad (PW-7) has stated in his evidence that on hearing cries from the side of the house of Sughan Ram he rushed towards that side and saw that the accused was assaulting Sughan Ram with a crowbar. The accused also said to him that he should run away otherwise he would attack him also.

Therefore, in view of the above evidence, it is established that the accused/appellant assaulted deceased Sughan Ram with the crowbar as a result of which he died.

Mr. Satyendra Sahu, learned counsel for the appellant argued that the accused attacked the deceased with the crowbar without any intention to cause death in a heat of passion all of a sudden in a sudden quarrel, therefore, offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... G.A. 1028/94 ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, Mr. U.N.S. Deo, learned Additional Public Prosecutor supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the appellant, we have perused the evidence. Cherki Bai (PW-8) who witnessed the crime, in para 7 of cross-examination has stated that at the time of incident legs of the accused were shackled with iron chain. Pradhan Ram (PW-5), who lodged the report, has stated in his evidence that the accused was mentally disturbed, for that, treatment was being given to him and treatment was given ten years prior to the incident and thereafter, he became all right.

Therefore, in view of the above, it is established that the accused was not mentally fit and that is why his legs were shackled by iron chain. At the time of incident, the father of the accused and the accused were talking regarding paddy, all of a sudden, the accused went inside the house, picked up the crowbar and assaulted his father with the crowbar. In the circumstances, from the above facts it is established that the accused assaulted the deceased all of a sudden without any pre-meditation and pre-plan, in a heat of passion, when both father & son were discussing something. Hence, it cannot be held that the accused assaulted the deceased with the intention to cause his death. However, knowledge can be inferred from the circumstances, because the manner in which the accused assaulted the deceased with the crowbar, he was having knowledge that by assaulting the deceased with the crowbar on his head

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CR.A.1028/94.... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

he is likely to cause his death. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal is partly allowed. Conviction and sentence awarded under Section 302 of the I.P.C. are set aside, instead thereof the accused is convicted for commission of offence under Section 304 Part-II of the I.P.C. and sentenced to undergo imprisonment for ten years. The accused is in detention since 1992 and thereby he has already served out the sentence. He be set at liberty forthwith unless required to be detained in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Soma

12.06